

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

20-CR-305 (LDH)

4 United States Courthouse
Brooklyn, New York

5 -versus-

February 16, 2023
12:30 p.m.

6 KARL JORDAN AND RONALD
7 WASHINGTON,

8 Defendants.

9
10 TRANSCRIPT OF CRIMINAL CAUSE FOR PROCEEDINGS
BEFORE THE HONORABLE LASHANN DEARCY HALL
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES

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24 produced by computer-aided transcription.

25
Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

PROCEEDINGS

(In open court.)

THE COURTROOM DEPUTY: Good afternoon. This is a criminal cause for a hearing in the matter of U.S.A. versus Carl Jordan and Ronald Washington, docket number 20-CR-305.

Can counsel state their appearance for the record beginning with the Government.

MR. MC CONNELL: Good afternoon, your Honor. Artie McConnell, Mark Misorek and Miranda Gonzalez; and we are joined by Anna November.

MS. KELLMAN: Susan Kellman for Mr. Washington, my client is present.

MR. DIAZ: John Diaz, Michael Houston, and Monica Nejathaim for the defendant Karl Jordan, who is standing to my right.

THE COURT: You all may be seated.

Folks, so we are convened today to discuss the letter that was filed by the Government on many on February 8, 2023. In the Court's minute entry and order, after our last status conference I directed the parties, quite simply, quite straightforwardly, to write to the Court in a joint submission to advise to the Court as to the parties' availability for trial beginning January 29, 2024.

That is all that I asked for. That is what I got from the defendants. It is not what I got from the Government.

Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

PROCEEDINGS

1 So before I get to the letter, I want to go back,
2 because it appears to me that the Government needs a history
3 lesson; I'm going to give it to you today.

4 As we all know Mr. Jason Mizell was tragically
5 killed October 30, 2002. Some 18 years later, the Government
6 filed an Indictment in this matter in August of 2020. That
7 Indictment was sealed and it was subsequently unsealed after
8 the arrest of the individuals that are before me today. A
9 Superseding Indictment followed in March of 2021.

10 After the parties engaged in discovery and having
11 been alerted by the parties that both the Government and the
12 defendants were ready to proceed to trial, the Court
13 endeavored to set a trial date. And on February 17, 2022, the
14 Court set a November 23, 2022 trial date. I also ordered,
15 after consultation with the parties, that any motion to
16 dismiss or motion to sever be filed by April 11, 2022. And
17 that any suppression or other pretrial motions, not including
18 motions in limine, be filed by June 17, 2022.

19 I'm going to say that part again: I also ordered
20 that any other motions, putting aside motions in limine, be
21 filed by June 17, 2022.

22 Did you hear what I just said?

23 MR. MC CONNELL: Yes, Judge.

24 THE COURT: I also ordered that motions in limine be
25 filed no later than October 19, 2022.

PROCEEDINGS

1 Now, on February 25, 2022, at the request of
2 Mr. Jordan and with the Government's consent as well as that
3 of Mr. Washington, the Court adjourned the trial date that was
4 scheduled for November 2022 and set the trial date for
5 February 20, 2023.

6 That date had to be moved up to the 13th because the
7 jury return date was changed by the court. I did, however,
8 leave unchanged the briefing schedule that had been set by the
9 Court back in February, on February 17, 2022. The Court did
10 receive a suppression motions by the defendants. The Court
11 also received motions to sever.

12 Now on October 12 of 2022, with respect to the
13 motions in limine, the Government filed a request that it be
14 permitted to exceed the Court's established page limit. The
15 Court granted the Government's request and allowed the
16 Government to file 45 pages of motions in limine. Those
17 motions in limine were filed on October 19, 2022.

18 Now, the June 17, 2022 deadline came and went
19 without any motions by the Government with respect to an
20 anonymous jury. So to did the October 19 filing of motions in
21 limine come without any reference to a motion for an anonymous
22 jury. Indeed the Government waited until January 3, 2023,
23 that would be six months, seven months after the June 17, 2022
24 deadlines for motions, other than motions in limine, to be
25 filed, and some two months after the motion in limine

PROCEEDINGS

1 deadline. June 3rd, 2023 also happened to fall approximately
2 five weeks before the start of this trial.

3 Now, despite the Government's failure to comply with
4 the Court's orders with respect to the filing of motions and
5 instead of rejecting the Government's motion outright as
6 untimely, as I could have, what I did instead was endeavor to
7 expedite a decision on your motion. I required the defendants
8 to respond to your motion within one week. I coordinated with
9 the jury department to determine whether, if I decided to
10 proceed with an anonymous jury, whether it was feasible to
11 convene an anonymous jury in the time frame that I was forced
12 into by the Government's dilatory conduct. I could only do
13 so, according to the jury department, if indeed I responded to
14 the Government's motion in a single day, which I did.

15 As I indicated, I only gave the defendants one week
16 to respond to the Government's motion. And in that
17 opposition, which it was an opposition, the defendants
18 indicated that if the Court were to grant the Government's
19 motion that I also grant the defendants' request that I
20 adjourn the trial. I was not surprised by the request given
21 the fact that preparing for an anonymous jury is an
22 undertaking which requires the parties and the Court to engage
23 in an iterative process regarding proposed voir dire
24 questionnaire. And lead counsel for Mr. Washington was
25 committed on a trial before Judge Garaufis that both

PROCEEDINGS

1 Mr. Jordan's counsel and the Government were full aware of
2 before the Government's untimely motion.

3 Now, on January 13 the Court convened a status
4 conference where I made a determination that I would grant the
5 Government's request for an anonymous jury. And before
6 deciding on the defendants' request to adjourn, I engaged in a
7 discussion with defense counsel. I alerted the parties that
8 if indeed I were to grant the defendants' request for an
9 adjournment, that it would result in a significant delay;
10 because not only is my trial calendar particularly full, the
11 trial calendar of the parties is also particularly full. I
12 did, however, offer up an April trial date as I had recently a
13 case that resolved without the necessity of a trial which
14 allowed me to have an April availability. That date, however,
15 was not available for the many counsel that sit around the
16 defense table. So April was not an available date.

17 What I was told by the defense counsel is that they
18 convened and quoting Mr. De Marco, who is not here, but
19 quoting Mr. De Marco it was indicated that November was the
20 date that they were all available. The Court, however, was
21 not available as of November. Instead the Court endeavored to
22 find a date that it was next available, which would require
23 the Court to set a date in January of 2024, approximately 60
24 days later than the date offered up by the defense counsel.

25 Now, the Government had an opportunity to speak at

PROCEEDINGS

1 the status conference. And at that status conference it
2 bemoaned the notion that the Court would set the trial date
3 out to January 2024. Again, responding to the request of the
4 defendants and as a result, directly, of the dilatory conduct
5 by the Government.

6 Indeed, Mr. Mc Connell suggested that defense in
7 this case prioritize this case over some of their other cases,
8 couldn't understand why that wasn't possible. "My question,
9 he says, "and request would be that the other conflicts, the
10 other trial cases that are conflicts for defense counsel be
11 moved so that this case can be tried."

12 I'm just curious, did you speak to all the other
13 attorneys in your office that have trials with defendants, did
14 you ask all of them if they wanted all of their trials moved
15 to accommodate your dilatory conduct?

16 It was a rhetorical question.

17 MR. MC CONNELL: No, we did not.

18 THE COURT: Shocker.

19 In any event, the Court granted both the
20 Government's request for an anonymous jury, finding the motion
21 itself had merit. And then I granted the defendants' request
22 to adjourn the trial, and scheduled it for the soonest date
23 that this Court had available.

24 I assumed, given the extensive back and forth that
25 we had at the status conference where I entertained the

PROCEEDINGS

1 Government's objection to the January 2024 date, that the
2 parties would proceed as I requested and simply speak to their
3 availability. As I indicated earlier, the defendants complied
4 with the Court's request; the Government did not.

5 And here we are now, where I can now entertain a
6 letter that was sent by the Government concerning the trial
7 date. So let's get to it. Let's talk about this letter,
8 Mr. Mc Connell. I have many thoughts.

9 I was told by Mr. De Marco that November was the
10 month that the defendants had available to them. You
11 complained that the summer months weren't explored. They
12 weren't explored, because I was told by the defendants that
13 November was the month that they had available.

14 I'm curious Mr. Mc Connell, do you think the Court
15 does not understand the way in which the calendar works?

16 MR. MC CONNELL: No, your Honor. And so --

17 THE COURT: So you think then that I would
18 understand that the summer months precede the month of
19 November.

20 So when -- assume everything I'm saying to you to is
21 rhetorical, and until I speak you don't have to say a word,
22 but you can stand -- so, when they tell me that they are not
23 available until November and I proceed from there, I am
24 satisfied that I have explored the calendar for the summer
25 months.

PROCEEDINGS

1 I don't answer to you. So the fact that you don't
2 believe that I explored the summer months to your
3 satisfaction, is of no moment.

4 Next, I need to understand. You indicate that a key
5 witness has passed away during the pendency of this case. I'm
6 sorry to hear that. Are you suggesting that this witness died
7 as a result of foul play? Because that wasn't made clear.

8 MR. MC CONNELL: No, absolutely not.

9 THE COURT: When you put it in the same sentence,
10 because it's one sentence, let's read it. "The Government is
11 also prejudiced by the extended delay as one key witness has
12 passed away during the pendency of the case and witness
13 intimidation and tampering remain a significant concern." One
14 sentence.

15 Did it not occur to you that that might create the
16 impression, the false impression, that somehow that witness
17 died as a result of conduct by either the defendants or
18 someone acting on their behest? That somehow this death was
19 the result of foul play? That didn't occur to you that that
20 sentence, the way you wrote it, wouldn't create that
21 impression?

22 MR. MC CONNELL: No, it did not, Judge. That
23 certainly was not the intent.

24 THE COURT: I don't know if I believe that it was
25 just sloppy.

PROCEEDINGS

1 Pass this down to Mr. Mc Connell, please. Pass this
2 to the defense, please.

3 Read the headline. Share with the rest of the
4 class.

5 MR. MC CONNELL: "Key witness in Jam Master Jay case
6 turns up dead. Feds seek to expedite trial."

7 THE COURT: I hold you responsible for that
8 headline, Mr. Mc Connell.

9 MR. MC CONNELL: Judge --

10 THE COURT: I hold you responsible for that
11 headline.

12 MR. MC CONNELL: Okay.

13 THE COURT: Maybe if you had put a period. Maybe if
14 you had put an explanation. Maybe if you had put some context
15 in your letter it wouldn't have resulted in press coverage of
16 this sort. At a minimum, maybe I wouldn't hold you
17 responsible for it.

18 MR. MC CONNELL: Okay.

19 THE COURT: But I have to tell you, with respect to
20 that paragraph in your letter, when the defendants move to
21 dismiss this Indictment in this case they complained that
22 witnesses would be unavailable. That was one of the reasons,
23 they argued, why the Indictment should be dismissed. And I
24 rejected their argument. I denied their motion to dismiss in
25 no uncertain terms. And I denied it because I believed that

PROCEEDINGS

1 their arguments were not sufficient to carry their burden in
2 that regard. And you agreed. In your opposition to the
3 defendants' motion to dismiss the Indictment for the very
4 reason that you complain about in your letter, you say, "even
5 if the witness was truly unavailable, including if they were
6 deceased, this would not constitute actual prejudice."

7 But lo and behold in a letter that you write to me
8 concerning an adjournment that was caused by you, you
9 repeatedly refer to purported prejudice that the Government is
10 suffering as a result of the unavailability of witnesses, the
11 first of whom that you reference not the result of conduct
12 that can be traced to these defendants.

13 What did that poor soul die of?

14 MR. MC CONNELL: Medical issue, your Honor.

15 THE COURT: Interesting.

16 I am curious, because it is not clear to me, in your
17 letter, I think it's the final paragraph, you say that you and
18 counsel for the defendant Washington also request a status
19 conference as soon as possible so that Mr. Washington can have
20 the opportunity to consent on the record to exclusion of
21 additional time from the speedy trial clock.

22 Now, Ms. Kellman wrote a letter in response to
23 yours. Her first point of business was to state, first,
24 Mr. Washington's consent to the exclusion of time is made
25 knowingly with the benefit of the advice of his lawyers.

PROCEEDINGS

1 Though the Government's concern that the defendant -- I can
2 stop there.

3 I'm perplexed by this paragraph.

4 MR. MC CONNELL: Well, your Honor, we felt it was
5 important to come to court --

6 THE COURT: No, no, no. That's not what I'm
7 perplexed by. I'm perplexed by the fact you write: You, the
8 Government, and defendant for counsel Washington.

9 Didn't seem like counsel for defendant Washington --

10 MR. MC CONNELL: -- well.

11 THE COURT: Well what?

12 MR. MC CONNELL: There were conversations, e-mails,
13 off the record in anticipation of our filing date where this
14 was --

15 THE COURT: Are you telling me that this was indeed
16 a joint request by Ms. Kellman that she said that she believed
17 that -- we need to have a, quote, "a status conference as soon
18 as possible so that Washington can have an opportunity to
19 consent on the record to the exclusion of additional time."

20 Are you suggesting to me that contrary to at least,
21 what it seems that her letter suggests, she seemed to be that
22 that had been taken care of. That she indeed was requesting a
23 status conference for that purpose?

24 MR. MC CONNELL: I'm not saying that.

25 THE COURT: Why did you write it?

PROCEEDINGS

1 MR. MC CONNELL: We felt that it was important --

2 THE COURT: Then you should have said "you felt it."

3 You wrote that you and Washington's counsel felt it,
4 which means that you made a demonstrative false representation
5 to this Court. I don't take that lightly either.

6 MR. MC CONNELL: Judge, if I can clarify. That's
7 obviously --

8 THE COURT: I don't need you to clarify. I have the
9 document in from of me.

10 MR. MC CONNELL: I'd like to make a record.

11 THE COURT: I'm certain you want to do a lot of
12 things, you will do them when I say you do.

13 MR. MC CONNELL: I would like to --

14 THE COURT: You made a misrepresentation to the
15 Court --

16 MR. MC CONNELL: And I would like to respond.

17 THE COURT: And you will wait until I am done.

18 MR. MC CONNELL: Okay.

19 THE COURT: Finally, I resent, I resent the
20 implication by your letter that the delay in proceeding to
21 this trial is the result of anything that this Court has done.

22 This Court has stood at the ready to try this case.

23 This Court has jumped through hoops to ensure that it could
24 proceed in a timely fashion. And you wrote in a letter, that
25 you filed on the public docket, that suggested that this Court

PROCEEDINGS

1 somehow lacks concern for the victim's family. That that
2 could be further from the truth.

3 Again, I jumped through hoops to accommodate your
4 dilatory filing. To suggest that this Court lacks empathy for
5 the fact that the defendants in this case remain in custody,
6 is further from the truth.

7 I have at all times, and remain ready, to proceed to
8 trial when it is feasible. And the fact that you believe it's
9 feasible on an earlier date is of no consequence.

10 Go ahead.

11 MR. MC CONNELL: Judge, first, that's certainly not
12 the import of the letter. It certainly was not the intent
13 that we had when we drafted it.

14 I completely agree, the Court has been extremely
15 accommodating. Your Honor has gone through extensive motion
16 practice on multiple fronts with us. You've been willing to
17 come to court to hear that out. That implication -- I don't
18 read the letter like that. I didn't draft it that way.

19 THE COURT: I do.

20 MR. MC CONNELL: I apologize. That's certainly not
21 our intention. I'm glad I had the opportunity to clear that
22 up for the Court.

23 Going in order. With respect to the need for
24 Mr. Washington to appear and waive time. As there always are,
25 there are conversations amongst counsel in anticipation of

PROCEEDINGS

1 filings, in anticipation of court dates; I was not privy to
2 all of them. But members of my office were in consultation
3 with the defense team. We made it clear to the defense that
4 we believed it was necessary for Mr. Washington to appear to
5 waive his speedy trial rights on the record, given the length
6 of the delay.

7 We completely accept the waiver was valid. We
8 completely accept Ms. Kellman's representations in her letter.

9 These are thorny appellate issues. They are the
10 responsibility of the Government, and something that -- an
11 issue that could be easily obviated by a quick court
12 appearance.

13 THE COURT: Nobody is in disagreement about that.
14 And I don't take issue with that. I take issue with the fact
15 that you indicated that this was a joint request, and it was
16 not. Period.

17 All you had to say was, your Honor, the Government
18 believes that it would be appropriate to have Mr. Washington
19 to come in as, Ms. Kellman did in her letter where she said,
20 "Your Honor, we believe that the waiver was knowing and
21 voluntary and made with the advice of counsel. But certainly
22 should the Court wish to inquire."

23 That's not what you did.

24 MR. MC CONNELL: I take responsibility for it. I
25 just want to be clear, that is a mistake. It is an error. It

PROCEEDINGS

1 is certainly not an intentional misrepresentation at all.
2 That was sort of the instinct that we needed to come back to
3 court shortly to help resolve what the Government believed
4 could be an issue.

5 THE COURT: It was something that could be dealt
6 with on April 3rd, we had a status conference that was set for
7 April 3rd. Certainly it wasn't going to be a thorny appellate
8 issue between February 8 and April 3rd.

9 MR. MC CONNELL: I understand, Judge. April 3rd was
10 still I think somewhere in the neighborhood of 70 days after
11 the last appearance. We may be wrong. But we felt it was
12 important to come to court to have Mr. Washington present and
13 to --

14 THE COURT: And he's here.

15 MR. MC CONNELL: So we're fine with that.

16 With respect to our request to reconsider an earlier
17 trial date. First, I am in no way asking for special
18 treatment for this case. I'm well aware of --

19 THE COURT: But you are, because I read it to you.

20 Let's be clear. This is just reading. That being
21 said, I don't know if there is any way for defense counsel to
22 prioritize this case over some of their other cases. These
23 defendants have been in custody for over two years. You go
24 on, "My request would be that the other conflicts, the other
25 trial cases that are conflicts for defense counsel, be moved

PROCEEDINGS

1 so that this case can be tried."

2 Do you know want me to read it again?

3 MR. MC CONNELL: No, I understand it.

4 It's a great example of why I'm not the most
5 articulate speaker. I think the import of what I was trying
6 to say is that the trial calendar, while packed both for the
7 Court and for counsel, is fluid. Cases resolve themselves.

8 It's been over a month since we last appeared
9 before, your Honor. One thing that I personally had not been
10 aware of is that the prior restrictions regarding the number
11 of trials that can be taking place in the courthouse
12 simultaneously has been lifted.

13 THE COURT: How about this. This is going to serve
14 you well moving forward. Why don't you assume I know how to
15 manage my own docket. Why don't you assume that I wear of
16 robe and you don't. Why don't you assume that I've been doing
17 this for a while. I don't need you to explain to me how it
18 works. Why don't you assume that.

19 MR. MC CONNELL: I do assume that. I know it,
20 Judge.

21 THE COURT: No, you don't.

22 MR. MC CONNELL: I mention that comment because it's
23 not something that I had fully explored.

24 THE COURT: There is a lot that you haven't fully
25 explored; but your failings are not mine.

PROCEEDINGS

1 MR. MC CONNELL: Back to the issue of requesting
2 special treatment. If that's how it came across at the status
3 conference or in a letter, I apologize. We, as an office, are
4 endeavoring to move cases as quickly as possible to trial.
5 We're doing that in this case. We're doing that in every
6 case. That has been our directive from our leadership. It's
7 something that I and other attorneys in this case do
8 personally in our other matters. And so we are simply
9 exploring whether or not that is possible. And something --

10 THE COURT: That's not what your letter said, that's
11 not how you proceeded at all. If that's what you wanted to
12 do, you failed. That is not what you have done.

13 Yours is not the only case I have with your office.
14 But yours is the only case that I have had to convene a
15 hearing to address the way in which you have fashioned your
16 request to suggest that this Court has somehow acted
17 improperly, to suggest that this Court is somehow delaying
18 unreasonably this trial. Only you, Mr. Mc Connell, only you.

19 MR. MC CONNELL: I didn't suggest that, Judge.
20 Respectfully, I don't believe that. And that's not what I'm
21 suggesting. What I'm suggesting is --

22 THE COURT: Then you might want to ask somebody to
23 read over your letters before you submit them.

24 Ms. Gonzalez, I nominate you.

25 MR. MC CONNELL: It's a good choice.

PROCEEDINGS

1 The point I was trying to make, which apparently was
2 not made, is that when you have a situation where both sides
3 are ready for trial. You have witnesses who are ready. You
4 have the Court that is ready. That we should make sure that
5 we exhaust all options before adjourning the case of this
6 nature for this length of time.

7 THE COURT: I adjourn. You didn't adjourn it. You
8 don't have that authority. I adjourned it. You don't have
9 that authority. I adjourned it, based on the information that
10 I have.

11 And just as I offered up April when I had a trial go
12 away, do you think it wouldn't occur to me to offer up another
13 date should another date become available to this Court?

14 Again, I don't need you to tell me how to do my job.

15 MR. MC CONNELL: Well, your Honor, I don't have much
16 to add. We were asking for a second look to see if anything
17 had changed.

18 THE COURT: That's not what you wrote.

19 All right sit down.

20 MR. MC CONNELL: Thank you.

21 THE COURT: Clearly the Court has no intention at
22 this time of altering it's determination with respect to the
23 January 29 trial date. That trial date is a trial date that
24 is available to all counsel, as confirmed by the letters sent
25 to this Court on February 8. Should anything change, of

PROCEEDINGS

1 course, the Court would entertain that. Nothing has changed.

2 With that, I would like to inquire as invited by,
3 you Ms. Kellman, of Mr. Washington.

4 Good afternoon, Mr. Washington. You can stay
5 seated. You've heard some back and forth about the trial date
6 in this matter. What you also heard, and which I'm assuming
7 you're aware of, is that your attorney on your behalf made a
8 motion, a joint motion with Mr. Jordan, to adjourn the trial
9 date from February 13. Now before I grant it, the request,
10 which I did grant, I made the parties aware that because of
11 the trial calendar that it would be quite sometime before this
12 Court would be able to try this case. And the date that the
13 Court has arrived at is January 29, 2024. Were you aware of
14 that fact?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you speak with your attorney
17 concerning the request for the adjournment and the potential
18 consequence, meaning that the trial date would you pushed
19 back?

20 THE DEFENDANT: Yes.

21 THE COURT: Were you in agreement with your attorney
22 when your attorney on your behalf made the request to adjourn
23 this trial?

24 THE DEFENDANT: Yes.

25 THE COURT: Sir, you are aware that you have a right

PROCEEDINGS

1 to a speedy trial, are you aware of that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Under the constitution and laws of the
4 United States you are to be brought to trial within 70 days
5 within the date of an Indictment. Are you aware of that?

6 THE DEFENDANT: Yes.

7 THE COURT: There are certain periods of excludable
8 delay. Now in order to accommodate the request for the
9 adjournment and the trial calendar that the Court has, I have
10 had to ask your attorney on your behalf whether you would be
11 consenting to an exclusion of time, meaning the time period
12 between today effectively and January 29, 2024, would not be
13 included in that 70-day time period.

14 THE DEFENDANT: Yes.

15 THE COURT: With that knowledge, are you agreeing to
16 the exclusion of time?

17 THE DEFENDANT: Yes.

18 (Continued on next page.)
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PROCEEDINGS

1 THE COURT: Anything else to address?

2 MR. MC CONNELL: No, your Honor. Thank you.

3 MR. DIAZ: No, Judge.

4 MS. KELLMAN: No, Judge.

5 THE COURT: All right. Parties, only write me
6 letters when it's necessary and when I ask for them.

7 (Whereupon, the matter was concluded.)

8 * * * * *

9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

11 /s/ Rivka Teich

Rivka Teich, CSR RPR RMR FCRR

12 Official Court Reporter

13 Eastern District of New York

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